



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: OFFICE OF THE ATTORNEY GENERAL
TITLE: CONTINGENCY FEE CONTRACT
CASE ID: 2017-07-0144
DATE: July 28, 2017

ATTORNEY GENERAL CONTINGENCY FEE CONTRACT

After examination and review, Office of Inspector General Chief Legal Counsel, Tiffany Mulligan, reports as follows:

The purpose of this Report is to fulfill the statutory requirements of Ind. Code § 4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics set forth in 42 IAC 1-5 or agency rule concerning conflicts of interests.

On July 13, 2017, the Office of the Indiana Attorney General (OAG) notified the IG that it wished to enter into a contingency fee contract with Penn Credit Corporation (Penn Credit) and Pfenninger and Associates (Pfenninger), an Indianapolis based collections law firm. The OAG's request explains that the State will utilize Penn Credit primarily to undertake collection activities on behalf of state agencies when the amount is less than \$6000 or when the enforcement of an action through proceedings supplemental actions is required on any case other than State Board of Accounts matters. The request further explains that Penn Credit will use Pfenninger when legal

representation is needed. The State will compensate Penn Credit and Pfenninger through a contingency fee in the amount of 14.5% of the amount recovered.

Pursuant to Ind. Code § 4-6-3-2.5(b), the OAG is required to make a written determination before entering into the contract that contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this determination as outlined by Ind. Code § 4-6-3-2.5(c). The OAG made such a determination and considered all of the factors outlined in the statute.

The OAG's determination explains that it is not cost-effective for the OAG to undertake collection activities on behalf of state agencies when the amount owed is less than \$6,000 or when the enforcement of an action through proceedings supplemental is required on any case other than State Board of Accounts matters. Collection litigation, particularly for low-dollar amounts, requires a disproportionate amount of time in court in relation to possible recovery, and attorneys who specialize in that area have ways of maximizing efficient use of their time. The OAG's determination further notes that, although collections litigation does not typically involve novel, complex, or difficult questions of law, it is a drain on the OAG's resources when undertaken for smaller amounts. Finally, the OAG's determination notes that Pfenninger is a recognized collection firm and will provide legal services throughout the State.

Furthermore, Ind. Code § 4-6-3-2.5(d) requires the OAG to request proposals from private attorneys wishing to provide services on a contingency fee basis, unless the agency, in this case also the OAG, determines in writing that requesting proposals is not feasible under the circumstances. The OAG's determination notes that they requested proposals from a number of nationally-recognized collection agencies, and Penn Credit offered the most comprehensive services for the most modest contingency fees.

After careful examination and review, the IG has determined that the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. First, according to the OAG, neither Penn Credit nor Pfenninger employs anyone involved in the contracting decisions for the OAG. Likewise, there is no information to indicate that any OAG employee or immediate family member of an OAG employee has a financial interest in either Penn Credit, Pfenninger or the contract itself. Because of that, it also does not appear that any OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or sole proprietor.

Based on the information provided, we find that entering into the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interest. This Report is issued in compliance with the above noted statutory requirements.

Dated July 28, 2017.

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

Lori Torres, Inspector General